

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO.: _____

PETER SACHS

Plaintiff,

V.

STEPHEN N. SERIO and
LOTUS MOTOR SPORTS, INC.

Defendants.

COMPLAINT FOR COPYRIGHT INFRINGEMENT

JURISDICTION

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

3. Venue in this District is proper under 28 U.S.C. § 1391(b) and/or 28 U.S.C. § 1400(a). Each Defendant may be found in this District and/or a substantial part of the acts of infringement complained of herein occurred in this District. Personal jurisdiction in this District is proper because each Defendant, without consent or permission of the Plaintiff created unauthorized copies of a work for which the Plaintiff has exclusive rights. Defendants then displayed the unauthorized copy at their place of business to promote sales of automobiles.

PARTIES

4. Louis Klemantaski (the “Author”), was a photographer. He was a prolific documenter of motor sports from 1936 until 1974, much of his most dramatic and aesthetic work occurred in the post-war period. These photos include one of a Ferrari 195S Barchetta of Luigi Chinetti and Pierre-Louis Dreyfus being prepared for the 1950 race at Le Mans (the “Work”).

5. Peter Sachs (“Sachs”) is a resident of Connecticut. On May 3, 1989 he purchased the Work, as well as numerous other photographs and photographic material from the Author which he thereafter referred to as The Klemantaski Collection (the “Collection”). On the same day the Author assigned his copyright in the Work, and all other works in the Collection to Sachs. (A copy of the Agreement for purchase of the Work and the Agreement assigning the copyright are set forth hereafter as Exhibit “A”). Since the Purchase and Assignment in 1989, Sachs has referred to the Collection as “The Klemantaski Collection” and has acquired additional collections along with their copyrights. Photographs from the Collection have been licensed for publication in numerous periodicals and other publications and numerous prints of photographs in the Collection have been sold to collectors.

6. Stephen Serio is a resident of Massachusetts. Lotus Motor Sports, Inc. is a Massachusetts corporation. According to the Secretary of the Commonwealth its principal office is in Brighton, Massachusetts and it maintains a showroom for the sale of automobiles in Waltham, Massachusetts. Stephen Serio is the Corporation’s Registered Agent, President, Treasurer, Secretary and Sole Director.

THE WORK

7. The Work has appeared in five books. Three of these were published in Europe in 1991 and 1998. Two of these books were published by The Klemantaski Collection, one “The

Eye of Klemantaski” was edited by Sachs and published by the Collection in 1993. There was a second printing in 2008. “The Eye of Klemantaski” and all publications include a copyright notice. (A copy of the Copyright Notice from “The Eye of Klemantaski” is annexed hereto as Exhibit “B”.) One of the European publications in which the Work appeared was “Klemantaski Himself” published by Palawan Limited in 1998.

8. Serio purchased “The Eye of Klemantaski” from the Collection on October 14, 1993. Serio purchased “Klemantaski Himself” from the Collection on August 15, 1998. (Copies of invoices and correspondence regarding the purchases are annexed hereto as Exhibit “C”.)

THE INFRINGEMENT

9. In early October 2008 Sachs learned that an unauthorized version of the Work was being displayed at the Lotus Motors, Inc. dealership. The Work also appears in the background of images of the dealership being published by the Defendants on their website.

COUNT I

INFRINGEMENT OF COPYRIGHTS

10. The Plaintiff is responsible for the development, production and distribution of the Work.

11. At all relevant times the Plaintiff has been the holder of the pertinent exclusive rights infringed by Defendants, as alleged hereunder, for the Work. The Work is the subject of a valuable assignment of the Author’s rights, including copyright in the Work.

12. The Work was published in books owned by the Defendant which contain copyright notices advising the Defendant that the Work is protected by the copyright laws of the United States.

13. The Plaintiff was informed and believes that each Defendant, without the permission or consent of the Plaintiff, has used and continues to use, the Work. In doing so, each Defendant has violated the Plaintiff's exclusive rights of reproduction and distribution. Each Defendant's actions constitute infringement of the Plaintiff's exclusive rights protected under the Copyright Act of 1976 (17 U.S.C § 101 *et seq*).

14. The foregoing acts of infringement have been willful, intentional, and in disregard of and with indifference to the rights of the Plaintiff.

15. As a result of each Defendant's infringement of the Plaintiffs' exclusive rights under copyright, the Plaintiff is entitled to relief pursuant to 17 U.S.C. § 504, and to his attorneys' fees and costs pursuant to 17 U.S.C. § 505.

16. The conduct of each Defendant is causing and will continue to cause the Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. The Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, the Plaintiff is entitled to relief from each Defendant for infringing the Plaintiffs' copyrights and ordering that each Defendant destroy all copies of the Work made in violation of the Plaintiffs' copyrights.

WHEREFORE, the Plaintiffs pray for judgment against each Defendant as follows:

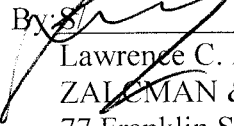
1. For entry permanent injunctions providing that Defendants shall be enjoined from directly or indirectly infringing the Plaintiff's rights in the Work or any other image that is owned or controlled by the Plaintiff ("the Plaintiff's Pictures"), including without limitation by reproducing or copying the Plaintiff's Work to distribute any of the Plaintiff's Pictures, or to make any of the Plaintiff's Pictures available for distribution to the public, except pursuant to a lawful license or with the express authority of

the Plaintiff. Defendant shall also destroy all copies of the Plaintiff's Pictures that Defendant has reproduced by any means or downloaded onto any computer hard drive or server without the Plaintiff's authorization and shall destroy all copies of the Work in Defendant's possession, custody or control.

2. For actual or statutory damages to pursuant to 17 U.S.C. § 504, at the election of the Plaintiff.
3. For the Plaintiff's costs.
4. For the Plaintiff's statutory attorneys' fees.
5. For such other and further relief as the Court deems proper.

Respectfully submitted,
The Plaintiff,
By his attorneys,

ZALCMAN & LEWIS

By: 

Lawrence C. Zalcman, Esq.
ZALCMAN & LEWIS
77 Franklin Street
Boston, MA 02110
617-723-2525
BBO#

A

Dated 3 May 1989

(1) LOUIS KLEMANTASKI

-and-

(2) PETER SACHS

ASSIGNMENT



LOUIS KLEMANTASKI of The Old School House Combe Hay Bath A
England (hereinafter called "the Assignor") of the one part and

PETER SACHS of 443 Webbs Hill Road Stamford Connecticut 06903 U.S.
(hereinafter called "the Assignee") of the other part

WHEREAS the Assignor is the Author of the photographic mater
described in the Schedule hereto ("the Photographs") and the owner
such copyright as may exist therein and the Assignee has agreed
purchase such copyright and all rights relating thereto for
consideration hereinafter appearing

NOW THIS DEED WITNESSETH as follows:

1. In consideration of the sum of £125,000 (one hundred and twenty five thousand pounds sterling) (inclusive of any value added tax which may be payable), the receipt of which is hereby acknowledged, the Assignor as beneficial owner HEREBY ASSIGNS unto the Assignee ALL such copyright as exists in the Photographs wheresoever the said copyright shall subsist for such residue of the term of copyright as is subsisting therein together with the right to sue for any past infringements TO HOLD unto the Assignee absolutely.
2. The Assignor warrants:
 - (a) that the Photographs are his own original work or the original work of staff employed by him under a contract of service in the course of their employment and that he is the owner of any copyright as may exist in the Photographs;
 - (b) that the exercise by the Assignee of the rights assigned to him will not infringe the rights of any third party;

- (c) that he has not granted by licence or otherwise or assigned any rights of any nature in the Photographs including without limitation any copyright therein to any third party whatsoever in any part of the world and will not carry out any such act after the date hereof.

IN WITNESS whereof the parties hereunto have set their hands and seals
the day and year first above written

SIGNED SEALED and DELIVERED)
by the said LOUIS KLEMANTASKI)
in the presence of:)

Louis Klemantaski
Klemantaski The Old Byre,
Cumbel Hay,
BATH.

SIGNED SEALED and DELIVERED)
by the said PETER SACHS in)
the presence of)



John C. Carter

Dated 3 May 1989

(1) LOUIS KLEMANTASKI

- and -

(2) PETER SACHS

A G R E E M E N T

THIS AGREEMENT is made the 3rd day of May 1989

BETWEEN

- (1) LOUIS KLEMANTASKI of The Old School House Combe Hay Bath Avon England (hereinafter called "the Vendor") of the one part and
- (2) PETER SACHS of 443 Webbs Hill Road Stamford Connecticut 06903 U.S.A. (hereinafter called "the Purchaser") of the other part

WHEREAS:

This Agreement concerns a collection of photographic and other materials hereinafter referred to as "the Collection". The Collection comprises the photographs, negatives, contact prints and transparencies listed in the Schedule to the form of Assignment annexed hereto and the Vendor's collection of race programmes. The parties hereto have agreed on the sale and transfer to the Purchaser of the Collection and the assignment to the Purchaser of such copyright as exists in the materials listed in the Schedule to the form of Assignment.

NOW IT IS HEREBY AGREED as follows:

1. The Vendor shall sell and the Purchaser shall purchase for the sum of £125,000 (one hundred and twenty five thousand pounds sterling) (inclusive of any value added tax which may be payable) the Collection and all rights relating to it. The parties acknowledge that the Collection is sold for export from the United Kingdom. The Purchaser shall make all reasonable efforts to assist the Vendor to obtain exemption from value added tax or to enable the transaction to be zero-rated.
2. The Vendor sells as beneficial owner.
3. Completion shall take place on 24 April 1989 (hereinafter called "the Completion Date") when the Vendor shall execute and deliver to the Purchaser a Deed of Assignment in respect of any existing copyright in the Collection in the form attached hereto.

4. On the Completion Date the Vendor shall deliver the Collection for immediate export to Rapid Movements Limited, 5 Skyport Drive, Harmondsworth, West Drayton, Middlesex as shipping agent for the Purchaser. The Purchaser shall reimburse the Vendor the cost of packaging and delivery in accordance with the Purchaser's instructions and shall be responsible for insuring the Collection as from the Completion Date.
5. The Vendor HEREBY WARRANTS that there are no outstanding liabilities or rights in respect of the Collection other than certain duplicate prints and duplicate transparencies now in the possession of the third parties with a view to publication and the Vendor hereby agrees (a) to indemnify the Purchaser against any claim which may be made against him in respect of any such liability or right; and (b) to pay to the Purchaser any reproduction fees that he is able to recover in respect of the duplicate prints and transparencies in the possession of third parties.
6. The Vendor HEREBY FURTHER WARRANTS that, (save as disclosed):
 - (a) he has not prior to the date hereof assigned, licensed or charged or agreed to assign, license or charge the Collection or any rights relating thereto, including without limitation the copyrights therein;
 - (b) he is not under any agreement with or other obligation to any person whereby he is obliged to confer upon such person any rights in the Collection or any rights relating thereto, including without limitation the copyrights therein;
7. The Vendor agrees that he will use his reasonable efforts:
 - (a) to co-operate with the Purchaser in the publication of any part of the Collection and shall assist in the preparation and editing of any book in which any part of the Collection is to be published, provided that he shall not be required to devote more than 14 days in any one year to such co-operation;

- (b) to provide the Purchaser with background information on the Collection and on himself for inclusion in any publication of any part of the Collection;
 - (c) to write a foreword which is reasonably satisfactory to the Purchaser for inclusion in any published version of any part of the Collection; (the copyright in such foreword shall vest in the Purchaser);
8. The Vendor further agrees that he will devote such time and attention as he shall in his absolute discretion consider necessary in order:
- (a) to personally sign a reasonable number of copies of any published version of any part of the Collection;
 - (b) to personally sign a reasonable number of prints of any of the photographs, negatives or transparencies in the Collection;
 - (c) at the request and expense of the Purchaser, to attend press conferences and other meetings relating to the Collection, in the United Kingdom or abroad.
9. The Vendor agrees that he will not sell or distribute any part of the Collection or any materials derived from the Collection, including but not limited to photographic prints and reproductions, nor assign or license the copyright in any part of the Collection.
10. This Agreement shall be binding on the Purchaser and Vendor and their respective successors, heirs and assigns.
11. Either party may assign the benefit of this Agreement without the consent of the other party.

12. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior written or oral representations or agreements between the parties with respect to the subject matter.

13. This Agreement shall be governed by English law.

IN WITNESS whereof these presents have been entered into the day and year first above written.

Signed by the said LOUIS KLEMANTASKI)
in the presence of)

Louis Klemantaski
KA h e e s
"The old Byne. Mary."
BOMB
BATH

Signed by the said PETER SACHS)
in the presence of)

General Sachs

[Signature]

1949 (continued.)

NEGATIVE NUMBER.	PLACE.	OLD No.	
P1 49R7	Goodwood	R19	204
B1 49R8	International Trophy Silverstone	R20	360
P1 49R9	Blandford Road Race	R21	238
P1 49R10	S.U.N.B.A.C. Silverstone 17.7	R22	180
B1 49R11	Goodwood 17th Sept	R23	276
P1 49R12	" 18th Apr.	R24	192
49R13	Veteran C.C. Rally	KT9	36
49R14	-----		
P1 49R15	Luton Hoo Speed Trials	ST11	126
P1 49R16	Shelsley 11th June	S6	150
B1 49R17	" 24th Sept	S7	48
P1 49R18	Bentley D.C. Firlie	ST9	5A
P1 49R19	Brighton Speed Trials	ST8	234
P1 49R20	Blandford Hill Climb	ST7	150
P1 49R21	V.S.C.C. Speed Trials, Silverstone	ST6	148
P1 49R22	Weston-s-Mare Speed Trials	ST10	102
P1 49R23	Eastbourne Rally	KT7	186
P1 49R24	Prescott		144
P1 49R25	V.S.C.C. Prescott		36

1950.

P1 50C1	Le Mans	C15	564
50C2	Zandvoort	C16	192
P1 50C3	Geneva, G.P. des Nations	C17	192
B1 50C4	Nurburgring	C18	264
50C5	Spanish G.P. Barcelona	C19	108
P1 50C6	XX Monte Carlo Rally	KT8	168

B

["The Eye of Klemantaski" – First Printing]

The Klemantaski Collection

65 High Ridge Road

Suite 219

Stamford, CT 06905 U.S.A.

Telephone & Fax: (203) 968-2970

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permission of The Klemantaski Collection.

Designed by Queener Design

["The Eye of Klemantaski" – Second Printing]

The Klemantaski Collection

PMB 219
65 High Ridge Road
Stamford, CT 06905-3814,
U.S.A.

Telephone: (203) 461-9804
Fax: (203) 968-2970
Email: info@klemcoll.com
Website: www.klemcoll.com

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the prior written permission of
The Klemantaski Collection.

Second Edition

Designed by Queener Design

C

The Klemantaski Collection

65 High Ridge Road - Suite 219

Stamford, CT 06905 U.S.A.

TEL & FAX: (203) 968-2970

Date: October 14, 1993

**Invoice: Mr. Stephen Serio
Lotus Motorsports
441 Stuart Street**

Boston, MA 02116

Ship To: same

One copy of <i>The Eye of Klemantaski</i>	\$ 15.00
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Shipping	<u>1.50</u>
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TOTAL	\$ 16.50
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Paid in full. Thank you.

TELECOPY TRANSMITTAL MESSAGE

TO: Steve Serio
FROM: THE KLEMANTASKI COLLECTION
Stamford, CT USA
FAX: (203) 968-2970

DATE: September 2, 1996

Number of pages including this page: 1

If you do not receive all the pages, or if you cannot get through,
please leave a message at (203) 968-2970

* * *

The Klemantaski Collection
65 High Ridge Road - Suite 219
Stamford, CT 06905 U.S.A.
TEL & FAX: (203) 968-2970

Dear Mr. Serio,

Thank you for your fax. Yes, we do have copies of *The Eye of Klemantaski* at \$17 each, including postage.

Current prices for prints are \$50 (8x10), \$100 (11x14) and \$200 (16x20). Signed prints and larger sizes are additional. Shipping is included for 8x10 prints and is additional for the larger sizes. The above prices do not include any reproduction rights.

Within the next two weeks you will receive an announcement of a new archive we have purchased along with a special promotion for prints from this new archive which would allow purchases of *Salute to Ferrari*, combined with *The Eye of Klemantaski*, for 50% off.

Sincerely,

THE KLEMANTASKI COLLECTION



Peter G. Sachs

Motor Racing Photographs by Louis Klemantaski & Nigel Snowdon

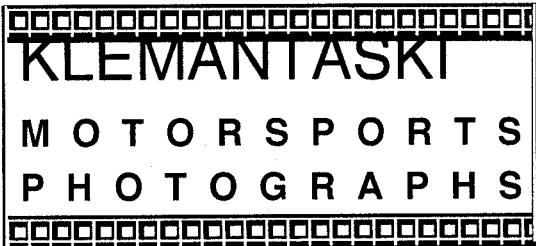
The Klemantaski Collection

65 High Ridge Road - Suite 219

Stamford, CT 06905 U.S.A.

TEL & FAX: (203) 968-2970

E-mail: KlemColl@aol.com



TO: Mr. Steve Serio

DATE: July 1, 1998

Number of pages including this page: 1

If you do not receive all the pages, or if you cannot get through,
please leave a message at (203) 968-2970.

Dear Mr. Serio,

Your order of the Portfolio edition of Klemantaski Himself has been delayed. We initially were promised delivery at the end of June (for delivery to you before the end of July).

We have now been informed that we will not receive delivery until the first week of August, which means that you will receive your order around August 15th. If you are in the U.K. or elsewhere in the EC, you will receive your book a few days earlier.

This delay is caused by the need to hand-assemble each portfolio. If there is any further delay, we will let you know.

You need not do anything at this time. We apologize for the delay, but we are certain that you will find the extra wait worthwhile in the end.

Sincerely,

THE KLEMAN TASKI COLLECTION

A stylized, handwritten signature in dark ink, appearing to be "PS" or "P.S." with a flourish.

Peter G. Sachs

The Klemantaski Collection
65 High Ridge Road - Suite 219
Stamford, CT 06905 U.S.A.
TELEPHONE & FAX: (203) 968-2970

Date: August 15, 1998

Invoice: Mr. Stephen Serio
Lotus Motorsports, Inc.
449 Western Ave.
Brighton, MA 02135

Ship To: same

One copy of the Portfolio Edition of <i>Klemantaski Himself</i>	\$ 828.25
Shipping	<u>82.82</u>
Total	\$ 911.07

Paid in full. Thank you.

The Klemantaski Collection
PMB 219 – 65 High Ridge Road
Stamford, CT 06905-3814 U.S.A.
TELEPHONE & FAX: (203) 968-2970

Date: November 5, 2000

Invoice: Mr. Stephen N. Serio
449 Western Avenue
Brighton, MA 02135

Ship To: same

One copy of the limited, signed and leather-bound edition of <i>Klemantaski & Aston Martin</i>	\$ 250.00
Shipping, packing & insurance	<u>20.00</u>
Total	\$ 270.00

Paid in full. Thank you!